APPENDIX A.

(Trial Ex. 34.)

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO,

In and for the County of Ada.

Wm. H. Banks Warehouses, Inc., *Plaintiff*,

vs.

D. A. Stubblefield, Commissioner of Agriculture of the State of Idaho, *Defendant.*

Civil No. 21,573.

MEMORANDUM DECISION.

The plaintiff corporation has petitioned this Court to issue a writ of mandate directed to the above named defendant to amend and correct warehouse licenses numbered 220 and 217, issued to petitioner under date of April 2, 1948, as of date of issuance of said licenses, by striking from said licenses the words "Jean Seed Company" and substituting therefor the words "William H. Banks Warehouses, Inc., warehouse" wherever the former term appears in said licenses, and to amend and correct all other licenses issued to said petitioner as of the date of issuance of said licenses, in the same manner.

The facts as disclosed by the evidence, in brief, are as follows: The plaintiff is an Illinois corporation with its

principal place of business in Chicago, and is authorized to do business in Idaho. It is engaged in business as a field warehouse, as outlined in detail in Exhibit 12 and in paragraph III of the petition. Under its method of operation petitioner leases the field warehouse from a prospective customer and places in charge thereof a custodian who takes possession of goods and merchandise deposited by the customer. Petitioner then issues warehouse receipts at its office in Chicago to whatever banks or other lending institutions the customer may designate. These banks then hold the warehouse receipts as collateral security for loans of such customer. The merchandise covered by the warehouse receipts so held is not released until the warehouse receipts are paid off.

It is alleged and admitted that petitioner at no time purports to operate a warehouse for the use of the general public, but operates its field warehouse only for each of its individual customers, as part of the security transactions described in the complaint.

The Idaho Department of Agriculture assigns to each warehouse licensed a serial number, which State number applies only to that warehouse so long as it is licensed, and without regard to changes in ownership or lease. The license forms printed and used, after naming the applicant, then designate the warehouse to be used, giving general location of same and the State warehouse number. The warehouse license is issued for a fiscal year running from July 1st to the following June 30th.

Petitioner entered the state in 1946, and procured license number 46 to operate State warehouse number 537 described as "Jean Seed Co. warehouse" at Filer (Exhibit 9). On June 24, 1947, petitioner applied for a license for the succeeding year to continue operation of State warehouse number 537 (Exhibit 6). On August 12, 1947, petitioner ap-

plied for a license to operate a warehouse on certain leased premises at Rupert, Idaho, designated State warehouse number 576, which was a warehouse also leased from the Jean Seed Company (Exhibit 4).

For some reason not explained by the evidence, the June 24, 1947, application (Exhibit 6) was not acted upon through issuance of a license until April 2, 1948, when State license number 220 (Exhibit 7) was issued to petitioner, reciting in part as follows:

> "William H. Banks Warehouses, Inc. of Chicago, Illinois, is hereby licensed in accordance with the State Bonded Warehouse Law and the regulations for bean warehouses thereunder to conduct the Jean Seed Company located in Filer, County of Twin Falls, Idaho, from July 1, 1947, to June 30, 1948 * * *."

The August 12, 1947, application (Exhibit 4) was not acted upon until April 2, 1948, when State license number 217 (Exhibit 5) was issued to petitioner, reading in part as follows:

> "William H. Banks, Warehouses, Inc. of Chicago, is hereby licensed in accordance with the State Bonded Warehouse Law and the regulations for bean and seed warehouses thereunder to conduct the Jean Seed Company located in Rupert, County of Minidoka, Idaho, from July 1, 1947, to June 30, 1948 * * *."

On June 25, 1948, verbal demand was made upon the Commissioner of Agriculture to correct certain licenses (Exhibits 5 and 7) as of April 2, 1948, so as to eliminate therefrom the words "Jean Seed Company" and substitute therefor the words "William H. Banks Warehouses, Inc. warehouse." The verbal demand was verified by a letter of June 28, 1948 (Exhibit 10), addressed to the Commissioner of Agriculture. On July 13, 1948, the Commissioner of Agriculture by letter (Exhibit 11) refused to correct the alleged error unless "the Department be di-

rected to make a change by a court of competent jurisdiction."

This action was filed July 20, 1948, and on the same day an alternative writ of mandate issued out of this court. An answer and return to the alternative writ of mandate was filed herein on December 5, 1949, with a supplemental answer and return later filed on January 10, 1950. The matter came on for hearing on January 26, 1950.

As written, the wording of neither license number 220 nor license number 217 makes sense. Each license by express wording is a "warehouse license" and by no stretch of the imagination could be considered a general business license. Nor was the department ever authorized to issue general business licenses.

The departmental employees knew that the "Jean Seed Company" was the fictitious name and business designation under which "W. Andrew Jean" operated. A reference to the files would have shown, in case of doubt, that the warehouse license number 46 (State 537) issued by the Department under date of September 27, 1946 (Exhibit 9) was issued to petitioner "to conduct the Jean Seed Co. warehouse."

We have, then, two warehouse licenses erroneously worded and erroneously issued where the patent errors are refused correction by the Defendant Department upon the advice and direction of the State Attorney General (the initials of the Attorney General appear in the dictation reference to the letter of June 13, 1948 (Exhibit 11). Defendant then seeks to justify the refusal of correction upon two grounds:

1. That the wording followed the direction of Rex G. Branch, an employee of petitioner, as given in a conversation with the office secretary some time in October, 1947, or more than six months before the date of the licenses in controversy.

2. That to correct the errors would affect rights and interests of persons not parties to this proceeding.

The first contention is neither plausible nor persuasive. Mr. Branch expressly denied giving any such direction as to the data on the license, and the defendant's evidence conclusively showed that he had no authority in connection with the application, issuance, or handling of such licenses for petitioner. It is not plausible that an oral direction given to the office secretary more than six months before the date of issuance of the licenses would justify a departure from the custom, practice, and procedure of the department in the issuance of such licenses without some formal notation therefor appearing in the departmental records.

The second contention is also entirely without merit. This question is purely one between the petitioner and the defendant Department of Agriculture over such errors in the issuance of petitioner's warehouse licenses. The errors should have been corrected without putting petitioner to the costs and expenses of this suit.

Just how third parties can have a vested legal right in these errors, to prevent their correction, is beyond the imagination of this Court. If in the conduct of these warehouses petitioner became involved with third parties over transactions occurring there, the right of recovery of such parties could hardly be dependent upon a State stenographer's error in filling out blanks in the license under which the petitioner was operating.

It is my opinion that the writ should be made permanent. Counsel for plaintiff may prepare, serve, and submit findings of fact, conclusions of law, and judgment in accordance herewith.

Dated this 3rd day of March, 1950.

CHARLES E. WINSTEAD,
District Judge.

(Trial Ex. 32.)

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO,

In and for the County of Ada.

William H. Banks Warehouses, Inc.,
Petitioner,
vs.
D. A. Stubblefield, Commissioner of Agriculture of the State of Idaho,
Respondent.
} Civil No. 21,573.

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

The petition of Petitioner for a writ of mandate herein came on regularly to be heard, and an alternative writ of mandate having heretofore issued and Respondent having filed his return and amended and supplemental return, Petitioner appearing by J. L. Eberle and L. Duncan Lloyd as counsel, and Respondent appearing by Robert E. Smylie, Esquire, as counsel, and oral and documentary evidence having been introduced on behalf of the respective parties and thereafter said cause was argued and written briefs submitted by counsel, and the Court being fully advised in the premises, does hereby render its decision and finds the facts and makes conclusion of law as follows, to wit:

Findings of Fact.

1. Petitioner, William H. Banks Warehouses, Inc., is and was a corporation duly organized and existing under the laws of the State of Illinois, with its principal place of business at 209 South La Salle Street, Chicago, County of Cook, Illinois, and is duly authorized to do business in the State of Idaho.

2. Respondent, D. A. Stubblefield, was and is the duly appointed and acting Commissioner of Agriculture of the State of Idaho and is charged with the administration of the Idaho Bonded Warehouse Law, Chapter 67, Section 2 of the Idaho Code Annotated, Sections 67-201 to 67-235 inclusive.

3. Petitioner is engaged in business as a field warehouseman in the State of Idaho and els where in the United States. Field warehousing is practiced by petitioner is essentially a security transaction designed to permit petitioner's customers to obtain loans from banks or other lending institutions and to use as collateral security for said loans, warehouse receipts issued by petitioner on the customer's inventory as hereinafter described. Petitioner's standard method of operation is as follows: When a potential customer desires to obtain loans on his inventory, petitioner enters into a contract with said customer under the terms of which petitioner leases premises from said customer and establishes a field warehouse on the premises so leased. A copy of the form used for such contract is attached to Petitioner's petition marked Exhibit A and made a part thereof. The field warehouse so established is completely enclosed, locked with petitioner's locks and posted with petitioner's signs. Petitioner also appoints a custodian as its own employee for each such warehouse. After said field warehouse is established, said customer may from time to time deposit his goods in said field ware-

house and apply to petitioner to issue warehouse receipts on the merchandise so deposited. Said goods so received in petitioner's field warehouse is properly segregated into separate lots and each lot is assigned a number and is tagged with such number. Upon such application, duly certified by said customer and by petitioner's duly appointed warehouse custodian, petitioner then issues warehouse receipts at its office in Chicago, Illinois to whatever banks or other lending institutions said customer may designate. Said banks or other lending institutions hold said warehouse receipts as collateral security for loans made to petitioner's customer. As such loans are paid off, said banks or other holders of warehouse receipts authorize petitioner to release the merchandise held in its field warehouse and covered by said warehouse receipts. Petitioner at no time purports to operate a warehouse for the use of the general public but operates its field warehouses only for each of its individual customers as part of the security transactions hereinbefore described.

4. On or about August 29, 1946, petitioner inquired of Mr. George Hersley, then the duly appointed and acting Commissioner of Agriculture of the State of Idaho, as to whether it would be required to comply with the Idaho Bonded Warehouse Law in connection with its field warehousing operations where said operations involved the storage of agricultural produce. At said time petitioner fully explained to said Commissioner of Agriculture the nature of petitioner's business as a field warehouseman and gave to said Commissioner of Agriculture pamphlets and other information fully describing the nature of said business. Said Commissioner of Agriculture ordered petitioner to comply with the Idaho Bonded Warehouse Law in all instances where petitioner was engaged in the field warehousing of agricultural produce.

5. Petitioner applied to said then Commissioner of

Agriculture for licenses to operate several field warehouses during the year 1946 and said licenses were granted. Said licenses contained only the name of petitioner as licensee and did not contain the name of any other person, firm or corporation, and were in accordance with the terms of the applications filed for said licenses by petitioner.

6. On or about June 24, 1947, petitioner applied to the Commissioner of Agriculture of the State of Idaho for a license to operate a warehouse on certain leased premises located in Filer, Idaho. A copy of said application is attached to petitioner's petition, marked Exhibit B, and made a part thereof.

7. On or about August 12, 1947, petitioner applied to the Commissioner of Agriculture of the State of Idaho for a license to operate a warehouse on certain leased premises located in Rupert, Idaho. A copy of said application is attached to Petitioner's petition, marked Exhibit C, and made a part thereof.

8. Pursuant to said application of June 24, 1947, the Commissioner of Agriculture, on April 2, 1948, issued Warehouse License No. 220 to petitioner. Said license read in part as follows:

> "William H. Banks Warehouses, Inc. of Chicago, Illinois, is hereby licensed in accordance with the State Bonded Warehouse Law and the regulations for bean warehouses thereunder to conduct the Jean Seed Company located in Filer, County of Twin Falls, Idaho, from July 1, 1947 to June 30, 1948 * * *"

The insertion of the words "Jean Seed Company" in said license was an error on the part of said Commissioner of Agriculture because said Jean Seed Company was not mentioned in said application and the application was made by petitioner on its own behalf and the application showed that petitioner alone was applying for a license to operate a warehouse. A copy of said license is attached to peti-

tioner's petition, marked Exhibit D, and made a part thereof.

9. Pursuant to said application of August 12, 1947, the Commissioner of Agriculture, on April 2, 1948, issued Warehouse License No. 217 to petitioner. Said license read in part as follows:

> "William H. Banks Warehouses, Inc., of Chicago, Illinois, is hereby licensed in accordance with the State Bonded Warehouse Law and the regulations for bean and seed warehouses thereunder to conduct the Jean Seed Company located in Rupert, County of Minidoka, Idaho from July 1, 1947 to June 30, 1948 * * *"

The insertion of the words "Jean Seed Company" in said license was an error on the part of said Commissioner of Agriculture because said Jean Seed Company was not mentioned in said application and the application was made by petitioner on its own behalf and the application showed that petitioner alone was applying for a license to operate a warehouse. A copy of said license is attached to petitioner's petition and marked Exhibit E, and made a part thereof.

10. Warehouse licenses issued by said Commissioner of Agriculture to other field warehouse companies operating in the State of Idaho generally contain no names of any persons, firms, or corporations except the names of said field warehouse companies themselves.

11. On June 25, 1948, verbal demand was made upon the Commissioner of Agriculture to amend and correct said warehouse license described in paragraphs 8 and 9 of this petition as of April 2, 1948, so as to eliminate therefrom the words "Jean Seed Company" and substitute therefore the words "William H. Banks Warehouses, Inc. warehouse," and to amend and correct other licenses issued to petitioner in the same manner. Said verbal demand was

verified by letter of June 28, 1948, addressed to said Commissioner of Agriculture, copy of which is attached to petitioner's petition marked Exhibit F, and made a part thereof.

12. Said Commissioner of Agriculture on or about July 13, 1948, refused to amend and correct said licenses described in paragraphs 8 and 9 of said petition in accordance with said demand and confirmed said refusal in a letter dated July 13, 1948, copy of which is attached to petitioner's petition, marked Exhibit C, and made a part of the petition; it being stated in such letter that the Commissioner refused to correct the alleged error unless the Department be directed to make a change by a court of competent jurisdiction.

13. By reason of the erroneous inclusion of the words "Jean Seed Company" or other similar words in said warehouse licenses, persons who deal with said Jean Seed Company or other person, firm, or corporation so named in said warehouse licenses, may possibly be induced to believe that said Jean Seed Company, or such other person, firm, or corporation, is in some manner an agent of the petitioner, or that the petitioner is in some manner operating a warehouse of said Jean Seed Company, or such other person, firm, or corporation, when, in fact, petitioner has only undertaken to operate its own field warehouse on premises leased from the said Jean Seed Company in Filer, Idaho, or on premises leased from such other person, firm, or corporation named in said warehouse licenses wherever located; and certain persons, firms, and corporations have made such claims against petitioner involving warehouse licenses issued to petitioner to operate said field warehouses in Filer and Rupert, Idaho, and said claims have given rise to litigation in the case entitled "William H. Banks Warehouses, Inc. and John Alfred Halford *vs* W. Andrew Jean, do-

ing business as Jean Seed Co., *et al.*," now pending in the District Court of the United States for the District of Idaho, Southern Division, Case No. 2587; and also in the case entitled: "George L. Watt and Bill Watt; J. M. Jamerson; Harold B. Malone and Olga Malone, husband and wife; D. C. Pierce; Fred R. Mathers; Elmer C. Cloninger; Edward E. Babcock; Hypotheek Land Company, a corporation; and E. Viola Faizell *vs.* William H. Banks Warehouses, Inc., a corporation, and Underwriters at Lloyd's (London), an unincorporated association," both of which cases are pending in the United States District Court for the District of Idaho, and have been consolidated for trial.

14. That respondent knew that "Jean Seed Company" was the fictitious name and business designation under which "W. Andrew Jean" operated; that said licenses were erroneously worded and the use of the word "Jean Seed Company" was a patent error; that when respondent discovered such errors it objected to the same within a reasonable time.

15. That the erroneous use of the words "Jean Seed Company" as a designation of the name of the warehouse in said licenses was not in accordance with any instructions by respondent, nor in accordance with the custom of respondent or the Department of Agriculture.

16. That the parties interested in the correction of said errors are before the Court and no other person has acquired any interest in such errors or the right to object to the correction thereof.

CONCLUSIONS OF LAW.

As conclusions of law, the Court holds and decides:

1. That in the licenses numbered 220 and 217, hereinbefore mentioned, the words "Jean Seed Company" were erroneously used in lieu of the words "William H. Banks Warehouses, Inc. Warehouse" and petitioner is entitled to have such error corrected by the issuance of amended licenses.

2. That petitioner is entitled to a judgment requiring respondent to correct and amend said warehouse licenses numbered 220 and 217, issued to petitioner under date of April 2, 1948, as of the date of issuance of said licenses, by striking therefrom the words "Jean Seed Company" and substituting the words "William H. Banks Warehouses, Inc., Warehouse" wherever the form appears in said licenses, and that the Clerk issue a peremptory writ of mandate accordingly; and petitioner be entitled to recover its cost incurred herein.

Let decree be entered accordingly.

March 7, 1950.

/s/ CHARLES E. WINSTEAD,
District Judge.

(Trial Ex. 33.)

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO,

In and For the County of Ada.

William H. Banks Warehouses, Inc.,
Petitioner,
vs.
D. A. Stubblefield, Commissioner of Agriculture of the State of Idaho,
Respondent.
} Civil No. 21,573.

JUDGMENT.

This cause came on regularly to be heard, and alternative writ of mandate having issued herein and respondent having filed his return and amended and supplemental return, J. L. Eberle and L. Duncan Lloyd appearing for petitioner, and Robert E. Smylie, Esquire, for respondent, and the Court having heard the testimony and having examined the proofs offered by the respective parties and after briefs being filed and the Court being fully advised in the premises and having filed herein its findings of fact and conclusions of law, and having directed that judgment and a peremptory writ of mandate should issue in the premises, NOW, THEREFORE, by reason of the law and findings aforesaid:

IT IS HEREBY ORDERED, ADJUDGED and DECREED, that a peremptory writ of mandate in due course of law issue, re-

quiring respondent, D. A. Stubblefield, Commissioner of Agriculture of the State of Idaho, to correct and amend warehouse license No. 220 and warehouse license No. 217, issued to petitioner under date of April 2, 1948 as of the date of issuance of said license, by striking from said licenses the words "Jean Seed Company" and substituting therefor the words "William H. Banks Warehouses, Inc., Warehouse" wherever the former words appear in said licenses, by the issuance of amended licenses bearing date April 2, 1948, showing such correction.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that said writ be issued by the Clerk of this Court under its seal and that respondent make known to this Court on March 8, 1950, at 2:00 o'clock P.M., on said date, how he has executed this writ, and to have with him, then and there, this writ; and it is further ORDERED that petitioner recover its costs and disbursements incurred herein, taxed at $.....

Done in open Court this 7th day of March, 1950.

/s/ CHARLES L. WINSTEAD,
District Judge.

APPENDIX B.

(Trial Exhibit 1.)

Contract for Services.

WILLIAM H. BANKS WAREHOUSES, INC.
Offices, Chicago, Ill.

THIS AGREEMENT, made and entered into this 21st day of September, A. D. 1946, by and between W. Andrew Jean, an individual, d/b/a Jean Seed Company, of Filer, Idaho, existing under laws of the State of Idaho hereinafter called the "Owner" and William H. Banks Warehouses, Inc., a Corporation organized and existing under laws of the State of Illinois, and duly licensed to do business in the State of Idaho, hereinafter called the "Warehouseman" WITNESSETH:

WHEREAS, the Owner will, by a certain indenture, or indentures, of even date herewith, or of subsequent date hereto, lease to said William H. Banks Warehouses, Inc., all of its right, title and interest in and to certain premises theretofore possessed by it as owner or lessee, and more particularly described in said indenture, or indentures, of lease; and,

WHEREAS, the Owner agrees to permit the Warehouseman to maintain a Warehouse upon the said premises so leased to the Warehouseman, as above set forth and to issue its Warehouse Receipts covering such property as the Warehouseman shall receive for storage on said Warehouse premises;

NOW, THEREFORE, in consideration of the covenants and agreements herein mentioned and contained, to be kept

and performed by the Owner, and its assigns, the Warehouseman (having taken possession of said premises) agrees to receive in store and issue against such property so received, Warehouse Receipts upon the following terms and conditions, namely:

1. The Warehouseman takes and holds possession of said premises under the lease, or leases, above mentioned so long as it shall have in its possession any property stored on said premises, and for which warehouse receipts may be outstanding.

2. The Owner warrants said premises to be suitable for the purposes for which it is intended they are to be used, and hereby undertakes, at its own expense, to keep said premise in good repair and in suitable condition (in the judgment of the Warehouseman) at all times during the term of the lease, or leases, for the purposes aforesaid, and also hereby undertakes and covenants to indemnify and at all times to keep the Warehouseman indemnified and to hold and save it harmless from and against any and all losses, costs and expenses, of whatsoever kind or nature, including attorneys' fees, which the Warehouseman may sustain, should said premises prove other than suitable, safe and proper; the Owner further warrants, covenants and agrees to and by these presents does indemnify and save the Warehouseman harmless from and against any and all loss, obligation, damage or liability, including costs and attorneys' fees, which may result from the injury, or alleged injury to any person, persons or property, or from the death of any person or persons upon the leased premises above referred to, and/or in connection with the performance of the terms of this contract, whether such person shall be an officer or an employe of the Owner, or of the Warehouseman, or any other person, and regardless of who shall be the Owner of such property.

3. No provisions of this agreement shall constitute a waiver of any lien to which the Warehouseman is entitled by law.

4. In case the Owner fails to keep said premises in good repair, as provided in Article "2" above, the Warehouseman is hereby authorized to forthwith repair the same, and the expenses thereof shall be an additional charge against the property stored.

5. The Warehouseman may at any time it sees fit, decline to receive any further goods in or upon said premises, or issue any further warehouse receipts therefor, without thereby cancelling the indenture, or indentures, of lease hereinbefore referred to.

6. Should the Owner at any time, or in any manner, break any of the terms or conditions of this contract; or should the Owner become insolvent, or should the Owner in any manner interfere with, or make difficult, the duties of the Warehouseman's agents, custodians, servants, or employes; or remove, or permit to be removed, any locks, or other fastenings, or protection for safety, or notice, or any signs, tags, or other marks; or should the premises hereby let, or leased, become involved in any manner in litigation; or should the Owner, or the Warehouseman, be ejected or ousted from the possession of the premises, or should proceedings be begun for the purpose; or should the Warehouseman at any time deem it necessary, for the protection of its interests and the property stored, then the Warehouseman shall have the right, without notice, to remove all property so stored from said premises to such other place, or places, as the Warehouseman may deem proper or expedient, and adequately insure same. And, in case of any such removal, the Owner undertakes and agrees to pay to the Warehouseman all costs and expenses of said removal, together with the expenses and

charges of storing and insuring said property elsewhere, until return and surrender of all outstanding warehouse receipts properly endorsed.

7. The Owner shall pay to the Warehouseman, as compensation for its services, storage of property and issuing of Warehouse Receipts therefor, on the following basis:

(a) For all property stored on premises, or parts of same leased of Owner, or others in its behalf, and located at or on premises of, or in possession of, the Owner at Filer, Idaho or elsewhere, and specified, or by custom or implication embraced by application or request for warehouse receipts, the charges for the first Fifteen Thousand Dollars ($15,000.00) Dollars, or less, of Loan Value, per month, or fraction, shall be Thirty Five Dollars ($35.00) Dollars. For all property stored, on which Loan Value, is in excess of $15,000.00, the rate, or charge per month, or fraction, shall be as follows:

On amounts up to and including $100,000.00 . $1.00 per thousand dollars;
On amounts over $100,000.00, up to and including $200,000.00 . . $ .90 per thousand dollars;
On amounts over $200,000.00, up to and including $300,000.00 . . $ .80 per thousand dollars;
On amounts over $300,000.00, up to and including $400,000.00 . . $ .70 per thousand dollars;
On amounts over $400,000.00, up to and including $500,000.00 . . $ .60 per thousand dollars;
On amounts over $500,000.00 . . . . . $ .50 per thousand dollars.

It being understood and agreed that the minimum net earnings under this agreement shall be not less than $35.00 per month, during such time as warehouse receipts are outstanding.

(b) The above schedule includes all anticipated charges, with the exception of fees for services of Custodian, or Transfer Agent. Additional charges, not anticipated, incident to the business conducted under this agreement, and all other outlays or charges which, in the judgment of the Warehouseman, may become necessary in the protection of the merchandise, may be added to the rates and amounts above specified.

(c) It is understood and agreed that all accrued charges shall be due and payable on or before the fifth day of each month following earnings or outlays of same in the conduct of the business.

8. It is hereby agreed that this contract for services shall remain in full force and effect for the term of one year from and after the date hereof and thereafter shall automatically be renewed each year on the 21st day of September, unless cancelled by thirty days' previous written notice by either party hereto to the other. It is agreed, however, that this contract may not be cancelled until surrender of all outstanding warehouse receipts issued on property stored in the leased premises abovementioned, the payment of all charges accrued thereon, and after orders to release property held under warehouse receipts are issued, signed by party authorized to receive the goods and delivered to the Warehouseman.

9. Settlements between the parties hereto shall be made as noted in Article "7" and the amounts due the Warehouseman shall be promptly paid by the Owner in lawful money of the United States at the office of the Warehouseman, so long as this contract shall continue in force.

10. Upon termination of this contract, this document and all other papers which form the basis of conduct of the business hereunder shall simultaneously be surrendered to the Warehouseman.

IN WITNESS WHEREOF, we have hereunto set our hands and seals as of this 21st day of September, A. D. 1946.

JEAN SEED COMPANY,
By (Signed) W. ANDREW JEAN,
Owner,

WILLIAM H. BANKS WAREHOUSE, INC.,
By (Signed) P. H. CARIS,
President.

(SEAL)

WITNESS:
(Signed) REX B. BRANCH.

ATTEST:
(Signed) I. H. KESSLER,
Secretary.

APPENDIX C.

Business forms used by W. Andrew Jean, doing business as "Jean Seed Company."

(From Trial Ex. 109.)

"SCALE TICKET"

WEIGHED ON STANDARD SCALES.

No. 40 9-24, 1947

Load of Pintos
From Fred Mathers
To Jean Seed Co.

Gross 8810 lbs.
Driver on x Tare 4880 lbs.
Driver off——— Net 3930 lbs.
Free——— Net——— Bush.
HWM Weigher.

Legal Weights lbs. per bu.

Alfalfa	60
Apples	48
Barley	48
Bran	20
Beans	60
Buckwheat	52
Clover Seed	60
Corn on cob	70
Corn shelled	56
Flax Seed	56
Hemp Seed	44
Millet Seed	50
Oats	32
Onions	57
Peas	60
Potatoes, Irish	60
Rye	56
Timothy	45
Wheat	60

(From Trial Ex. 101.)

"SCALE TICKET"

WEIGHED ON TYPE REGISTERING BEAM SCALE.

No. .....

Load Small Reds
From Chas. Zach

Gross 4300 lbs.
Tare 5630 lbs.
Net 8670 lbs.
Bu. 77

Date 10-8 1947
To Jean Seed Co.
Test..... Hauler.....
Price..... Amt..... $..... On..... Off.....
R. W. T. Weigher

(From Trial Ex. 101.)

"MEMORANDUM OR WHIZ TICKET"

Contractor & Processor Seed Peas & Beans

JEAN SEED CO.

W. Andrew Jean

P. O. Box 122 Filer, Idaho

Phone 47

M Charles Zach

Address

X Rec'd.	Mill	H.P.	Del'd.	Chg.	Cash	Miscel.
Quan.		Description			Price	Amount
77		Red Beans			wt.	86.70

All claims for returned goods must be accompanied by this bill

2958 Rec'd by RBA

(From Trial Ex. 101.)

"CROP SETTLEMENT AND STATEMENT"*

JEAN SEED COMPANY

Crop Settlement

Lot No.

Crop Beans Variety Small Reds Stock Letter

Name of Grower Chas. Zach Date 4-30-48

Address Filer, Idaho Agent

Credits—	Bags No. & Kind With Seed	Weight Loss Milling Hand Picking	Weight	Contract Price	Net Amount
Net Wt. Received—Rec. No.	304		33 831		
Less: Wt. Loss—Milling					
Less: Wt. Loss—Hand Picking					
Net Wt.—Hand Picked Seed			29 845	10 00	2984 50
Misc. Items Due Grower—		3458 lbs. culls @ 1.00			34 58
Total Amount Due For Crop					3019 08

Deductions—		Amount	
Threshing bill	1½#twine @ 1.50	2 25	
	Total Debits	2 25	2 25

Net Amount Due Grower..... Payment..... Draft..... Check..... No..... 3016 83

Remarks:—

Jean Seed Company
Rupert and Filer, Idaho
Per W. Andrew Jean

* Extraneous items on printed form not pertinent to this exhibit is not included in this copy.

APPENDIX D.

IDAHO BONDED WAREHOUSE LAW.

(As in force in 1946-1948. References are to Idaho Code, 1932.)

Sec. 67-201. SHORT TITLE OF ACT. This act shall be known by the short title of Bonded Warehouse Law.

Sec. 67-202. TERMS DEFINED. The term "Public Warehouse" or "Warehouse" as used in this chapter shall be deemed to mean every building, structure, or other protected inclosure in which any agriculture produce is received for storage or transfer; such warehouses are hereby declared to be public utilities.

The term "agricultural product" wherever used in this chapter shall be deemed to mean grains, dry peas, dry beans, leguminous seeds, hay, potatoes, fruit, honey, eggs, dried, canned or preserved fruit, canned vegetables, canned fish, meat, poultry, dairy products, wool and feeds (not including minerals) or any of them.

The term "person" includes a corporation or partnership or two or more persons having a joint or common interest.

The term "warehouseman" means a person operating or controlling a public warehouse.

The term "receipt" means a warehouse receipt.

Sec. 67-203. LICENSES NECESSARY TO OPERATE PUBLIC WAREHOUSE AND/OR WEIGH AND GRADE AGRICULTURAL PRODUCE. Before a person can lawfully operate a public warehouse and/or weigh and grade agricultural produce in this state, he must procure licenses under this chapter; *provided, however, that the foregoing requirement as to li-*

censes is not applicable to any warehouse or warehouseman who is licensed under an Act of Congress approved August 11, 1916 (39 Statutes at Large 44) and Acts Amendatory thereof, commonly called the "United States Warehouse Act," but licenses issued pursuant to said laws of the United States shall be taken and considered as a full compliance with the provisions of this chapter relative to faithful performance of the obligations of such warehouseman.

Sec. 67-204. PENALTY FOR OPERATING WITHOUT LICENSE. Any person operating a public warehouse without a license shall forfeit to the state for each day's operation fifty dollars, and such operation may be enjoined upon complaint of the commissioner of agriculture.

Sec. 67-205. INSPECTION AND CLASSIFICATION OF WAREHOUSES, STORAGE, WAREHOUSING, WEIGHING AND CERTIFICATION OF PRODUCTS. Duties of warehousemen. Upon application by any person for license to conduct a warehouse under this chapter, the department of agriculture is authorized to investigate and determine whether the warehouse for which licenses are applied, or have been previously issued, under this chapter, are suitable for the proper storage of agricultural products, and the Department of agriculture is authorized with or without application to wit:

To inspect any warehouse licensed under this chapter; to investigate the storage, warehousing, classifying according to grade, and otherwise weighing and certification of agricultural products therein conducted; to classify warehouses, licensed or applying for license, in accordance with their ownership, location, surroundings, capacity, conditions and other qualities, and as to the kinds of licenses issued or that may be issued for them pursuant to this chapter; and to prescribe, within the limitations of this chapter, the duties of the warehousemen conducting ware-

houses licensed under this chapter with respect to their care of and responsibility for agricultural products.

Sec. 67-206. Licenses to Warehousemen—Issue—Conditions Precedent. The department of agriculture is authorized, upon application to it, to issue to any warehouseman a license for the conduct of a warehouse or warehouses in accordance with this chapter and such rules and regulations as may be made hereunder; provided, that each such warehouse be found suitable for the proper storage of the particular agricultural product or products for which a license is applied for, and that such warehouseman agree, as a condition to the granting of the license to comply with and abide by all the terms of this chapter and the rules and regulations prescribed hereunder.

Sec. 67-207. Term of License—Renewal. Each license issued under Section 67-206 and Section 67-215 shall be issued for a period not exceeding one year. All licenses shall terminate on June thirtieth following their issuance.

Sec. 67-208. Bond of Applicant for License—Additional Bond. Each warehouseman applying for a license to conduct a warehouse in accordance with this chapter shall, as a condition to the granting thereof, execute and file with the department of agriculture a good and sufficient bond other than personal security to the state to secure the faithful performance of his obligations as a warehouseman under all the laws of the state, and the rules and regulations prescribed hereunder, and of such additional obligations as a warehouseman as may be assumed by him under contracts with the respective depositors of agricultural products in such warehouse. Said bond shall be in such form and amount, shall have such surety or sureties, and shall contain such terms and conditions as the department of agriculture may prescribe to carry out the purpose of this chapter, including the requirements of fire insurance.

Whenever the department of agriculture shall determine that a bond approved by it is, (sic) for any cause has become, insufficient, it may require an additional bond or bonds to be given within the time fixed by a written demand therefor the license of such warehouseman may be suspended or revoked: provided, that the foregoing requirement as to bond shall not be applicable to any warehouse or warehouseman who has given a bond as required by an act of Congress approved August 11, 1916 (39 U. S., at L. 446), and acts amendatory thereof, commonly called the United States Warehouse Act, but that bonds given pursuant to said laws of the United States shall be taken and considered as a full compliance with the provisions of this chapter relative to security for the faithful performance of the obligations of such warehouseman.

Sec. 67-209. Action on Bond by Persons Injured. Any person injured by the breach of any obligation to secure which a bond is given, under the provisions of Section 67-208, shall be entitled to sue on the bond in his own name in a court of competent jurisdiction to recover the damages he may have sustained by such breach; provided, that the liability of the surety upon the bond required to be given by Warehousemen as provided in Section 67-208 of this chapter, shall be limited to the amount specified in the bond, and in case of recoveries had by two or more persons for violation of the conditions of such bond in excess of the amount of the bond, such recovery shall be prorated and the total recovery as against the surety shall not exceed the amount of the bond.

Sec. 67-210. Designation of Warehouse as Bonded Warehouse. Upon the filing with and approval by the department of agriculture a bond, in compliance with this chapter, for the conduct of a warehouse, such warehouse shall be designated as bonded hereunder; but no warehouse

shall be designated as bonded under this chapter, and no name or description conveying the impression that it is so bonded, shall be used until a bond, such as provided for in Section 67-208, has been filed with and approved by the department of agriculture, of this state or of the United States, and if such bond has been filed with and approved by the department of agriculture of the United States, until satisfactory proof thereof be filed in the department of agriculture of this state, nor unless the license issued under this chapter for the conduct of such warehouse remains unsuspended and unrevoked.

Sec. 67-211. Fees of Department. The Department of Agriculture may charge, assess, and cause to be collected a reasonable fee for every examination or inspection of a warehouse under this chapter and a fee not exceeding ten dollars per annum for each warehouse license or renewal thereof and a fee not exceeding two dollars and fifty cents for each weigher and grader license or renewal thereof issued to a warehouseman under this chapter. All such fees shall be deposited and covered into the State Treasury, and credited to the Agricultural Department Inspection Fund.

Sec. 67-212. Schedule of Rates—Posting. Every public warehouseman shall charge without discrimination the handling and storage rate that is fixed by the Public Utilities Commission and may collect such charges as of July first following date of delivery. Every public warehouseman shall annually, during the first week in July, publish by posting in a conspicuous place in his warehouse, a schedule of storage and handling rates for the ensuing year, which schedule shall be kept posted in a conspicuous place in said warehouse. Further, the warehouseman shall annually, during the first week in July, mail to the Department of Agriculture, a copy of such rates.

Sec. 67-213. Privilege of Examining Products Stored. Every person having an interest in any agricultural product stored in any such warehouse, and every state inspector, shall have the right to examine at all times during ordinary business hours any product so stored, and all parts of such warehouses, provided warehouse or the agricultural products stored therein is not endangered by such inspection; and every warehouseman, his agent and servants shall furnish proper facilities for such examination.

Sec. 67-214. Employment of Inspectors. The department of agriculture may employ such inspectors, samplers and weighers as it may deem necessary.

Sec. 67-215. Licenses to Classify, Grade or Weigh Products for Storage. The department of agriculture may, upon presentation of satisfactory proof of competency, issue to any person a license to classify any agricultural product or products, stored or to be stored in a warehouse licensed under this chapter, according to grade or otherwise and to certificate the grade or other class thereof, or to weigh the same and to certificate the weight thereof, or both to classify and weigh the same and to certificate the grade or other class and the weight thereof, upon condition that such person agree to comply with and abide by the terms of this chapter and of the rules and regulations prescribed hereunder so far as the same relate to him, and execute a sufficient bond to the State of Idaho in sum determined by the department of agriculture for the faithful discharge of his duties.

Sec. 67-216. Suspension or Revocation of License to Classify, Grade or Weigh Products for Storage. Any license issued to any person to classify or to weigh any agricultural product or products under this chapter may be suspended or revoked by the department of agriculture

whenever it is satisfied, after opportunity afforded to the licensee concerned for a hearing, that such licensee has failed to classify or to weigh any agricultural product or products correctly, or has violated any of the provisions of this chapter, or of the rules and regulations prescribed hereunder, so far as the same may relate to him, or that he has used his license or allowed it to be used for any improper purpose whatsoever. Pending investigation, the department of agriculture, whenever it deems necessary, may suspend a license temporarily without hearing.

Sec. 67-217. Fees for Inspection. The department shall fix the fees for the inspection and weighing of agricultural products, such fees to be lien upon such products.

Sec. 67-218. Warehousemen to Receive Products Without Discrimination. Every warehouseman conducting a warehouse licensed under this chapter shall receive for storage therein, so far as its capacity permits, any agricultural product of the kind customarily stored therein by him which may be tendered to him, bearing certificate, when required, of an official inspector showing suitable condition, for warehousing, in the usual manner in the ordinary and usual course of business, without making any discrimination between persons desiring to avail themselves of warehouse facilities.

Sec. 67-219. Products for Storage Deemed Deposited Subject to Law. Any person who deposits agricultural products for storage in a warehouse licensed under this chapter shall be deemed to have deposited the same subject to the terms of this chapter and the rules and regulations prescribed hereunder.

Sec. 67-220. Inspection and Grading of Fungible Diseased of Insect Infested Products. Any fungible diseased or insect infected agricultural product complained of

by any person having interest in the warehouse or agricultural products stored in a warehouse licensed under this chapter shall be inspected and graded by a representative of the department of agriculture or a person duly licensed to grade the same under this chapter, and if such inspection or grading shows such agricultural product to be in condition that its continued storing or retention would injure or damage the warehouse or other products stored therein the owner shall, by order of the inspector, forthwith remove such agricultural product. Providing the owner of such product is unknown to the inspector or warehouseman, the warehouseman shall proceed to remove or make disposition of such product in a manner that will tend to save and realize the values contained in such product by the owner, under such rules and regulations as may be prescribed under this chapter.

Sec. 67-221. Fungible Products of Different Grades to Be Kept Separate. Every warehouseman conducting a warehouse licensed under this chapter shall at no time while they are in his custody mix fungible agricultural products of different grades.

Sec. 67-222. Receipt for Products Stored. For all agricultural products stored in a warehouse licensed under this chapter original receipts shall be issued by the warehouseman conducting the same, but no receipts shall be issued except for agricultural products actually stored in the warehouse at the time of the issuance thereof.

Sec. 67-223. Receipts for Products Stored—Contents. Every receipt issued for agricultural products stored in a warehouse licensed under this chapter shall embody within its written or printed terms:

1. All the requirements of a receipt under the uniform warehouse receipts law.

2. A description of the agricultural products received, showing the quantity thereof, or, in case of agricultural products customarily put up in bales or packages, a description of such bales or packages by marks, numbers, or other means of identification and the weight of such bales or packages.

3. The grade or other class of the agricultural products received and the standard or description in accordance with which such classification has been made: provided, that such grade or other class shall be stated according to the official standards of the state applicable to such agricultural products as the same may be fixed and promulgated under authority of law: provided further that until such official standards of the state for any agricultural product or products have been fixed and promulgated, the grade or other class thereof may be stated in accordance with any recognized standard; provided, that unless otherwise required by law, when requested by the depositor of other than fungible agricultural products, a receipt omitting compliance with this subdivision may be issued if it has plainly and conspicuously embodied in its written or printed terms a provision that such receipt is not graded.

4. A statement that the receipt is issued subject to the State Bonded Warehouse Act and the rules and regulations prescribed thereunder.

5. Such other terms and conditions within the limitations of this chapter as may be required by the Department of Agriculture.

6. All "warehouse receipts" issued under the provisions of this chapter, shall be upon forms prepared and supplied by the Department of Agriculture and issued upon requisition of the warehouseman at a reasonable cost.

Sec. 67-224. Standards for Agricultural Products. The

department of agriculture is authorized, from time to time, to establish and promulgate standards for agricultural products in this chapter defined by which their quality or value may be judged or determined.

So far as practicable such standards shall conform to the official standards of the United States applicable to such agricultural products as the same may from time to time be fixed and promulgated.

No warehouseman in this state shall insert in any receipt issued by him any language in anywise limiting or modifying his liabilities, or responsibilities, as imposed by the laws of this state.

Sec. 67-225. Loss of Receipts—Conditions of Reissue. While an original receipt issued under this chapter is outstanding and uncancelled by the warehouseman issuing the same no other or further receipt shall be issued for the agricultural product covered thereby or for any part thereof, except that in the case of a lost or destroyed receipt a new receipt, upon the same terms and subject to the same conditions and bearing on its face the number and date of the receipt in lieu of which it is issued, may be issued upon the giving of satisfactory security in compliance with the rules and regulations made pursuant to this chapter.

Sec. 67-226. Records of Products Stored—Reports—Conduct of Warehouses. Every warehouseman conducting a warehouse licensed under this chapter shall keep in a place of safety complete and correct records of all agricultural products stored therein and withdrawn therefrom, of all warehouse receipts issued by him, and of the receipts returned to and canceled by him, shall make reports to the department of agriculture concerning such warehouse and the condition, contents, operation, and business thereof in such form and at such times as it may re-

quire, and shall conduct said warehouse in all other respects in compliance with this charter and the rules and regulations made hereunder.

Sec. 67-227. Examination of Products Stored—Publication of Findings. The department of agriculture is authorized to cause examinations to be made of any agricultural product stored in any warehouse licensed under this chapter. Whenever, after opportunity for hearing is given to the warehouseman conducting such warehouse, it is determined that he is not performing fully the duties imposed on him by this chapter and the rules and regulations made hereunder, the department may publish its findings.

Sec. 67-228. Suspension or Revocation of Warehouseman's License. The department of agriculture may, after opportunity for hearing has been afforded to the licensee concerned, suspend or revoke any license issued to any warehouseman conducting a warehouse under this chapter, for any violation of or failure to comply with any provision of this chapter or of the rules and regulations made hereunder or upon the ground that unreasonable or exorbitant charges have been made for services rendered. Pending investigation the department of agriculture, whenever it deems necessary, may suspend a license temporarily without hearing.

Sec. 67-229. Publication of Reports. Names and Locations of Warehouses. The department of agriculture from time to time may publish the results of any investigation made under this chapter; and it shall publish the names and locations of warehouses licensed and bonded and the names and addresses of persons licensed under this chapter and a list of all licenses terminated under this chapter and the causes therefor.

Sec. 67-230. Examination of Books. The department of agriculture is authorized through officials, employees, or agents of the department designated by it, to examine all books, records, papers, and accounts of warehouses relating thereto.

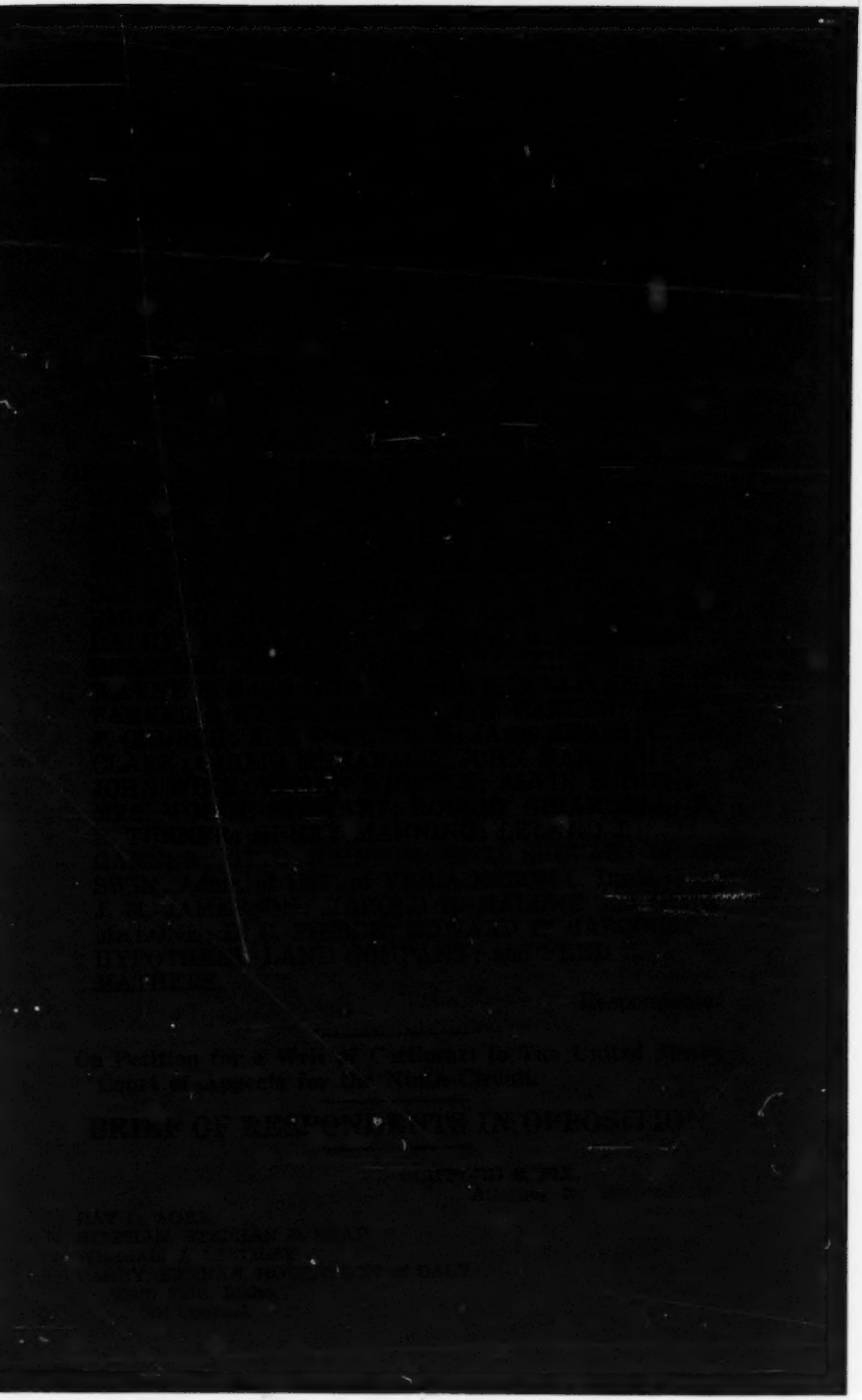
Sec. 67-231. Rules and Regulations. The department of agriculture shall from time to time make such rules and regulations as it may deem necessary for the efficient execution of the provisions of this chapter.

Sec. 67-232. Cooperation. In the administration of this chapter the department is directed to cooperate with the state seed commissioner, with the federal departments and with official agencies in other states.

Sec. 67-233. Violation of Law—Penalty. Every person who shall forge, alter, counterfeit, simulate, or falsely represent, or shall without proper authority use, any license issued by the department of agriculture under this chapter, or who shall violate or fail to comply with any provision of Section 67-208, or who shall violate or fail to comply with any of the provisions of Section 67-212, or who shall alter, forge, simulate, counterfeit, violate or fail to comply with Section 67-233, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than $50.00 nor more than $300.00, or imprisoned not more than six months, or both fine and imprisonment, in the discretion of the court.

Sec. 67-234. Rent of Quarters—Employment of Assistants. The department is authorized to rent such quarters and to employ such persons and means as it may deem necessary in the city of Boise and elsewhere, and it is authorized, in its discretion, to employ qualified persons not regularly in the service of the state for temporary assistance in carrying out the purposes of this chapter.

Sec. 67-235. Effect of Partial Invalidity of Law. If any clause, sentence, paragraph, or part of this chapter shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered.



SUBJECT INDEX

	PAGE
Opinions below	1
Jurisdiction	2
Question Presented	2
Statement	3
Summary of Argument	6
Argument	6
1. In effect the present position of petitioners has been once rejected by this Court and should not be reconsidered	6
2. The lower Courts have given to the decision of the Idaho state court all the faith and credit to which it was entitled	9
(a) Only a question of fact was determined in the state court action	10
(b) None of the respondents were parties to the state court action	10
(c) The subject matter of the state court action had already been submitted to the United States District Court	11
(d) There is no administrative decision or practice of the Idaho Department of Agriculture which has been ignored herein	12
3. No amendment to the licenses pursuant to the writ of mandate of the state court could affect the rights of respondents herein	13
4. The lower Court's decisions neither relate to nor affect field warehousing generally	16
Conclusion	18

AUTHORITIES CITED

CASES

	PAGE
Ada County v. Bottolfsen, 61 Idaho 64, 72; 97 P. 2d 599, 602	11
Carrington v. Crandall, 65 Idaho 525, 533; 147 P. 2d 1009, 1012	11
Chas. Wolff Packing Company v. Court of Industrial Relations of Kansas, 267 U. S. 552	7
General Investment Company v. Lakeshore and M. S. R. Company, 260 U. S. 261	8
Magnolia Petroleum Co. v. Hunt, 320 U. S. 430	10
Mutual Life Insurance Company v. Hill, 193 U. S. 551	7
Radio Corporation of America v. Radio Engineering Laboratories, 293 U. S. 1	11
Western Pacific Railroad Corporation v. Western Pacific Railroad Company, 345 U. S. 247	7

STATUTES

Constitution of U. S., Article 4, Section 1	10
28 U. S. C. Section 1738	10
28 U. S. C. Section 1254(1)	2
Idaho Bonded Warehouse Law, Idaho Code Annotated (1932)	13
Sec. 67-202	14, 17
Sec. 67-208	4

MISCELLANEOUS

30 American Jurisprudence, Judgments, Sec. 220, p. 951	11
50 C. J. S., Judgments, Sec. 821, p. 385	11

In The

Supreme Court of the United States

October Term, 1953

No. 192

WILLIAM H. BANKS WAREHOUSES, INC. and JOHN ALFRED HALFORD,

Petitioners,

vs.

GEORGE L. WATT; WILLIAM WATT; ROLAND ULRICH; C. J. DeVISSER; MARIE DeVISSER and C. J. DeVISSER, as Admr. W.W.A. of EST. of A. W. DeVISSER, Dec'd; FRED TRAUTWEIN; HARRY VAN GILDER; CHARLES ZACH; FRED INGRAHAM; CLYDE BACON, INC.; L. A. HARDY; FRED C. ROGERS; RUDY BONADIMAN; ALBERT ASSON; MARIO L. DALRY; ELZO R. CHUGG; CASPER G. BAGNELL; HERSCHEL BARNES; ELMORE LOVELAND; WAYNE F. GARRARD; PARKER & SULLIVAN; D. F. PARKER & KEITH PARKER; J. S. PARKER; JACK F. CHURCH; A. R. McCUISTON; JAKE KERBS; C. C. CLARK; GUILIO MENAPACE; JOHN MARTSCH; JOHN WINN; VIVIAN WHIPPLE; ALVIN BROWN; MRS. MINNIE STEWART; ROBERT GIRARDELL; R. B. TURNER; HENRY MANNING; LELAND J. GARNER; OTTO JOHNSON; L. L. SPEVAK; W. G. SWIM, Admr. of EST. of VIOLA FRIZELL, Dec'd.; J. M. JAMERSON; HAROLD B. MALONE and OLGA MALONE; D. C. PIERCE; EDWARD E. BABCOCK; HYPOTHEEK LAND COMPANY; and FRED R. MATHERS,

Respondents.

On Petition for a Writ of Certiorari to The United States Court of Appeals for the Ninth Circuit.

BRIEF OF RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the U. S. District Court for the District of Idaho (R. 233-270) is reported in 96

Fed. Supp. 731. The opinion of the Court of Appeals (R. 678) is reported in 196 F. 2d 1018. The opinion of this Court upon the previous petition for writ of certiorari appears at 345 U.S. 932. The opinion of the Court of Appeals (R. 722) denying the petitioner's re-instated petition for rehearing is not yet reported.

JURISDICTION

The Court of Appeals judgment was entered May 15, 1952, (R. 679). Petition for rehearing was denied June 19, 1952 (R. 697).

The jurisdiction of this court was invoked under 28 U.S.C. Sec. 1254 (1) and the case was remanded to the Ninth Circuit Court of Appeals April 13, 1953. The re-instated petition for rehearing and petitioners' supplemental petition for rehearing was denied by the Court of Appeals on June 15, 1953. The jurisdiction of this court is again invoked under 28 U.S.C. Sec. 1254 (1).

QUESTION PRESENTED

Whether the owners of agricultural produce, which was converted while in public warehouses in Idaho, are to be denied recovery of the value of their produce from the warehouseman and his bondsmen merely because a state court has ex post facto determined that, through a clerical error, the wrong name designations of warehouses appeared in warehouse licenses and ordered a change of such name designations, which change was immaterial to the validity of the owners' claims and was ordered in an action to

which none of the produce owners were parties, and which was commenced, long after the agricultural produce had been converted, and by the petitioners herein after these petitioners had submitted the entire subject matter, including the warehouse licenses, to the jurisdiction of the United States District Court in an action for a declaratory judgment.

STATEMENT

Complete statements of the facts involved are contained in the opinion of the District Court (R. 233-270) and the Findings of Fact (R. 309-343). A comparison of these with the statement of the case made by petitioners shows that petitioners' statement is colored and inaccurate in many respects.

It is obvious that petitioners have completely misconstrued the decision o fthe District Court which by adoption in its entirety became the decision of the Court of Appeals. Liability has been imposed upon petitioners in this action upon the sound basis that anyone whose actions induce the opening and operation of a warehouse for storage of *agricultural produce* in Idaho is, under the Idaho Bonded Warehouse Law, the warehouseman and liable to the owners of the produce in the event that produce is converted while in the warehouse.

A discussion of the details of petitioners' statement herein would serve no purpose, since the only facts involved which are necessary or pertinent to a consideration of the question presented are the following:

During the time involved in this cause, the Idaho Bonded Warehouse Law was in effect. This law is set forth in Appendix D of the Petition herein beginning at page 54. There is no need to repeat it in this brief.

William H. Banks Warehouses, Inc., (hereinafter called "Banks") leased warehouse buildings in Filer and Rupert, Idaho, from W. Andrew Jean (Exs. 15, 16 & 17, R. 505, 235, 243, 314, 315)[1]. Banks also applied to the Department of Agriculture of the State of Idaho (hereinafter called "Department") for licenses to operate *public* warehouses, not *field* warehouses, in these buildings under the Idaho Bonded Warehouse Law, (Ex. 9, R, 497, 316, 317; Ex. 10, R. 498, 241-244, 323, 324, 328). Banks also deposited with the Department, as its warehouseman's bond and in compliance with Section 67-208 of the Idaho Bonded Warehouse Law (Petition p. 56, R. 7), the Lloyd's Policy (Ex. 41, R. 561, 562, 240).

Licenses were issued to Banks to operate these warehouses as public warehouses for the periods shown on the licenses (Ex. 8, R. 498, 238-239; Exs. 11 & 12, R. 498, 245, 246). Public warehouses for the storage of agricultural produce were operated in each of these buildings (R. 516, 579, 581, 582, 603, 607). Banks was the warehouseman at each of the warehouses. (Findings XXVII & XXVIII R. 335-336).

The judgment herein is in favor of the owners of

1) As stated by petitioners, the original exhibits were not printed. Record references are to pages of the Transcript where the exhibit was received in evidence followed by references to pages where all or a portion of the exhibit appears.

dry beans who deposited their beans in these warehouses. The beans were converted and disposed of prior to April 1, 1948, without the owners' consent and the owners have not been paid therefor (R. 556-558).

Petitioners, on July 6, 1948, (Petition p. 6) commenced a declaratory judgment action in the United States District Court for the District of Idaho against respondents asking that it be determined that petitioners were not liable to respondents for the value of beans delivered (R. 3). On July 20, 1948 (Petition pp. 12, 34), after petitioners had invoked the jurisdiction of the United States District Court, they petitioned an Idaho state court for a writ of mandate to require the Commissioner of Agriculture of the State of Idaho to amend certain of the licenses previously issued. None of the respondents were parties to this mandamus action. (Finding XXIII, R. 331-332). The writ of mandate was issued by the state court ordering the licenses amended by changing the name designation only of the warehouses. (Ex. 35, R. 555). Petitioners' complaint concerns the holding that these amendments do not defeat the rights of respondents to recover the value of their converted beans.

This same question has previously been submitted to this court on a petition for a writ of certiorari which was granted on other grounds (345 U. S. 932), the ground now urged being ignored by the court.

SUMMARY OF ARGUMENT

1. In effect the present position of petitioners has been once rejected by this Court and should not be reconsidered.
2. The lower Courts have given to the decision of the Idaho state court all of the faith and credit to which it was entitled.
   (a) Only a question of fact was determined in the state court action.
   (b) None of the respondents were parties to the state court action.
   (c) The subject matter of the state court action had already been submitted to the United States District Court.
   (d) There is no administrative decision or practice of the Idaho Department of Agriculture which has been ignored herein.
3. No amendment to the licenses pursuant to the writ of mandate of the state court could affect the rights of respondents herein.
4. The lower Courts' decisions neither relate to nor affect field warehousing generally.

ARGUMENT

1. In effect the present position of petitioners has been once rejected by this Court and should not be reconsidered.

The initial petition for a writ of certiorari herein (No. 266, October term 1952) presented two questions. One was in effect identical to that presented by the present petition, the other related to the procedure of the Court of Appeals in denying a petition for

rehearing. This initial petition was filed on August 11, 1952. No action was taken by this Court until after the decision in *Western Pacific Railroad Corporation v. Western Pacific Railroad Company*, 345 U. S. 247, decided April 6, 1953. On April 13, 1953, the initial petition herein was granted upon the procedural question only. The fact that no action was taken by this Court upon the initial petition until April 13, 1953, and after the *Western Pacific* decision, certainly indicates that this Court did not consider the question presented in the instant petition to have merit. Also if on the initial petition this Court had found that the present position of petitioners was meritorious, the action of this Court would have been different from that which was taken, i. e. remanding the case to the Court of Appeals for action in the light of the opinion in the *Western Pacific* case. In order for this Court to determine the nature of the action to be taken upon the initial petition, it was necessary for the Court to consider the grounds now being urged, and to determine to take the action which was taken on the initial petition it was necessary that this very ground be rejected. We have then a situation in which petitioners are again attempting to present to this Court a question which is without merit and which, in effect, has been so held.

We are not unaware of the decisions of this Court in *Mutual Life Insurance Company* v. *Hill*, 193 U.S. 551; *Chas. Wolff Packing Company* v. *Court of Industrial Relations of Kansas*, 267 U.S. 552 and

General Investment Company v. *Lakeshore and M.S.R. Company*, 260 U.S. 261, but this case is materially distinct from those cases in that the decisions in all of those cases required substantial amendments to pleadings and orders in both trial courts and intermediate appellate courts so that the status of the parties on a second proceeding in this Court was materially altered, whereas the granting of the prior writ of certiorari in this case only reinstated a petition for rehearing in the Court of Appeals, which petition has been denied. The status of the parties on this second petition for a writ of certiorari is exactly the same as it was at the time of the initial petition and no reason exists for considering again a question identical to that in the initial petition.

The result of this action on the part of petitioners is to further delay the recovery by respondents of the value of their agricultural produce which was converted more than five years ago. Such harassing and vexatious tactics should not be condoned by reconsideration by this Court of the petitioners' rejected position. Reason and justice require that this further attempt at delay by petitioners be summarily terminated.

The discussion which follows is for the purpose of showing that, even if petitioners are entitled to a reconsideration of the question presented (which respondents do not concede), the petition for writ of certiorari should be denied.

2. The Lower Courts have given to the decision of the Idaho State court all of the faith and credit to which it was entitled.

While petitioners present only one question by their petition, they proceed to argue the whole case upon its merits. It is respondents' understanding that arguments and matters which do not relate to the question presented are not to be considered. Respondents, therefore, are confining the contents of this brief to matters which are relevant to the question presented. This is made difficult by the fact that much of the petition is made up of matters which are not relevant and which could and should be answered were the case being considered upon its merits as in the District Court or even the Court of Appeals.

It is at least difficult to determine from the petition exactly what position petitioners are in fact relying upon. However, it seems that, in an attempt to lead this Court into the belief that there exists here a reason of sufficient importance to effect a review on writ of certiorari, petitioners are relying upon a patently unsupportable contention. This contention is that the District Court failed to give full faith and credit to a decision of an Idaho state court in an action brought by petitioners against the Commissioner of Agriculture of the State of Idaho.

Even a vague understanding of the principles of full faith and credit will disclose that there has been here no denial of any full faith and credit. As concerns the judgment of the Idaho state court in the action brought by petitioners against the Idaho Com-

missioner of Agriculture, Article 4, Section 1 of the Constitution of the United States and the Act of Congress passed pursuant thereto (28 U.S.C. Section 1738), require only that this judgment shall have such faith and credit given to it in every court within the United States as it has by law or usage in the courts of the State of Idaho. Thus effecting on a national basis a uniform application of the doctrine of res judicata (*Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430). It can readily be seen that the District Court gave to the decision of the Idaho state court all of the faith and credit to which it would be entitled in the courts of Idaho.

(a) Only a question of fact was determined in the state court action.

In spite of the repeated assertions by petitioners that the decision of the Idaho state court involved the construction of an Idaho statute, that is simply not the fact. A reading of the Idaho state court's Memorandum Decision, Findings of Fact and Conclusions of Law, and Judgment (Petition, Appendix A, pp. 31-45) clearly shows that the state court action involved only a question of fact, i. e. whether a clerical error had been made in the warehouse license issued to Banks, the error claimed relating only to the name designation of the warehouses.

(b) None of the respondents were parties to the state court action

The District Court held that the respondents were not bound by the judgment of the state court. How the respondents, who were not parties or in privity

with parties to the action in the state court, could be bound by the determination of that court solely upon a question of fact cannot be understood. The District Court would have erred had it held that the judgment of the state court could affect the rights of respondents. This is the rule generally, as shown in 30 American Jurisprudence, Judgments, Sec. 220, p. 951, and in 50 Corpus Juris Secundum, Judgments, Sec. 821, p. 385; it is the rule of this Court (*Radio Corporation of America* v. *Radio Engineering Laboratories*, 293 U.S. 1); and in Idaho (*Ada County* v. *Bottolfsen*, 61 Idaho 64, 72; 97 P. 2d 599, 602; *Carrington* v. *Crandall*, 65 Idaho 525, 533; 147 P. 2d 1009, 1012).

(c) The subject matter of the state court action had already been submitted to the United States District Court.

By filing their Complaint for Declaratory Judgment (R. 3-18) on June 6, 1948, petitioners invoked the jurisdiction of the United States District Court for the District of Idaho, and by the allegations of this Complaint submitted the entire subject matter to the jurisdiction of that Court. Included in the subject matter submitted, were all questions concerning the liability of petitioners under the licenses (R. 8, 14). These licenses were then made the subject matter of the petition for the writ of mandate filed by petitioners in the Idaho state court against the Commissioner of Agriculture on June 20, 1948.

Since the action of the state court involved only a question of fact, this is not a situation in which there

is any encroachment upon any field reserved to the state courts; this question of fact could have been determined in this action just as well as in an action in a state court.

Having invoked the jurisdiction of the United States District Court with the request for the broad remedy of a declaratory judgment, petitioners exhibited bad faith in attempting to limit the District Court's action upon the subject matter by thereafter filing the petition in the Idaho state court. This very act of petitioners is an indication of an appropriate feeling that the claims of respondents were meritorious, unless the status of the parties could somehow be altered. This attempt by petitioners to alter the status of the parties is typical of the attitude and actions of petitioners in their prolonged endeavors to elude the legitimate claims of respondents.

(d) There is no administrative decision or practice of the Idaho Department of Agriculture which has been ignored herein.

Petitioners also claim that the District Court ignored administrative decisions and practice of the Idaho Department of Agriculture. There exists no administrative decision in Idaho contrary to the District Court's decision, but on the contrary the letters from the Idaho Commissioner of Agriculture as far back as November, 1944 (Ex. 4, 5, 6 & 7, R. 496-597) were clear in stating that Banks would have to qualify as a public warehouseman before conducting its operations in Idaho. Even the Idaho state court, in its Finding of Fact No. 4 (Petition, Appendix A,

p. 38), found that the Commissioner of Agriculture ordered Banks to comply with the Idaho Bonded Warehouse Law in all instances where Banks was engaged in the warehousing of agricultural produce. In other words, the situation as far as the Idaho Department of Agriculture was concerned was simply that a person could call his operation whatever he wished if he complied with the Idaho Bonded Warehouse Law. This is in no way inconsistent with the holding of the lower Courts. The Idaho Bonded Warehouse Law relates to *public* warehouses (Petition, Appendix D., pp. 54-66) and any person who complies with the Idaho Bonded Warehouse Law, who makes application for a license to conduct a public warehouse, as did Banks in both of the warehouses involved, and who posts a good and sufficient bond covering the operation of the warehouse, as did Banks with its million-dollar bond, cannot cause loss to the owners of agricultural produce unless that person is permitted subsequently to say, as Banks is attempting now to say, that the warehouses were really being operated by someone else.

3. No amendment to the licenses pursuant to the writ of mandate of the state court could affect the rights of respondents herein.

Even though the decision of the Idaho state court were considered to be binding upon respondents, the result could not be different than was held by the District Court. As above stated, the only effect of the Idaho state court's judgment was to change the name designation of the warehouses. It is entirely

immaterial to this action whether the warehouses were designated as "Jean Seed Company" or were designated by the name of "Wm. H. Banks Warehouses, Inc. Warehouse." The action in the state court was not commenced until long after the beans of the respondents had been converted. No change in the name designation of the warehouses on the licenses could affect the following facts which are determinative of the right of the respondents to recover the value of their beans:

(a) Banks leased the whole of the buildings constituting each of the warehouses involved (Ex. 15, 16 and 17, R. 505, 235).

(b) Banks made application for licenses to conduct *public* warehouses in each of these particular warehouses (Ex. 9, R. 498, 316, 317; Ex. 10, R. 498, 241-244, 323, 328).

(c) Regardless of the name designation of the warehouses, the licenses related to and authorized *public* warehouses to be conducted in these particular buildings designated as State Warehouse No. 537 at Filer and State Warehouse No. 575 at Rupert (Exs. 11 and 12, R. 498, 245, 246, 325, 330).

(d) *Public* warehouses were, in fact, operated in each of these warehouses (R. 516, 579, 581-582, 603, 607; Sec. 67-202, Idaho Bonded Warehouse Law, Petition, Appendix D. p. 54).

(e) Beans of respondents were deposited in these warehouses and converted; respondents have not

been paid any part of the value of their beans (R. 556-558).

(f) Without the action of Banks in making applications for these licenses and in depositing its warehouseman's bond, neither of these warehouses would have been operating (R. 258, Finding XXVII, R. 335).

Under these facts no amendment or change made in either of the licenses could in any way affect or defeat the right of respondents to recover from Banks and its bondsmen.

It is apparent that petitioners thought the wording of the licenses was material and that changing the name designation of the warehouses would affect the rights of respondents. Otherwise the action in the state court would not have been commenced. In this petitioners were in error as is shown by the language of the judge of the state court in his Memorandum Decision (Petition, Appendix A. p. 35):

> "If in the conduct of these warehouses petitioner became involved with third parties over transactions occurring there, the right of recovery of such parties could hardly be dependent upon a state stenographer's error in filling out blanks in the license under which the petitioner was operating."

If the name designation of the warehouses were material to the result of this action, the giving of full effect to the changed name designations, i. e. that the warehouses were each a "William H. Banks

Warehouses, Inc., Warehouse", only strengthens respondents' position that Banks was the warehouseman at these warehouses, under the Idaho Bonded Warehouse Law.

Petitioners misconstrue the basis of the District Court's decision and attempt to limit it to the language of the licenses themselves. That this is not the basis of the District Court's opinion, which was adopted by the Court of Appeals in its entirety, is apparent from reading the opinion itself (R. 233-270).

The grounds upon which liability has been imposed upon petitioners are succinctly stated at pages 257-261 of the Transcript of Record, and could be summarized as being to the effect that anyone whose actions induce the opening and operation of a warehouse for the storage of agricultural produce, as was done here, is, under the Idaho Bonded Warehouse Law, the warehouseman and liable to the owners of the produce in the event the produce is converted while in the warehouse.

4. The lower court's decisions neither relate to nor affect field warehousing generally.

Petitioners assert (Petition pp. 22-25) that the decisions of the lower Courts banish the field warehousing industry from the State of Idaho. It is not believed that this discussion is material to the consideration of the question presented; however, respondents believe it would be unfair to leave the impression that this assertion has merit.

Petitioners (Petition p. 22) take from its context one sentence of the District Court's opinion. By so doing they attempt to distort the meaning and enlarge the scope of the opinion. Just a cursory reading of the opinion (R. 233-270) or even of the paragraph of the opinion from which this sentence was taken (R. 263-264), reveals beyond question that both the District Court, and the Court of Appeals when it adopted the District Court's opinion in its entirety, was discussing and considering only the position of field warehousing as it related to *agricultural produce* as the same is defined by the Idaho Bonded Warehouse Law.

Concerning the business of field warehousing, all that has ever been claimed by respondents and all that has been held by the lower Courts in this action is that, in the narrow field of the warehousing of *agricultural produce*, the legislature of the State of Idaho has assumed exclusive jurisdiction. That Legislature has made any building, structure, or other protected inclosure in which any *agricultural* produce is received for storage or transfer a public warehouse, and has declared such warehouses to be public utilities. That Legislature has also made a person who operates or controls a public warehouse the warehouseman thereof (Idaho Bonded Warehouse Law, Sec. 67-202, Petition, Appendix D, p. 54). Neither the Legislature, the District Court nor the Court of Appeals has attempted or accomplished any effect upon the business of field warehousing except

as concerns *agricultural produce.* Instead, for the protection of the owners of agricultural produce against obvious dangers of loss through uncontrolled operation of warehouses storing agricultural produce, the legislature adopted the Idaho Bonded Warehouse Law; the District Court and the Court of Appeals gave proper effect to it.

For petitioners to urge that the effect of the opinions below is to banish field warehousing generally from Idaho and that these opinions conflict with Idaho state court decisions or create a conflict with other federal court decisions including the Court of Appeals for the Ninth Circuit, is an unwarranted imposition upon this Court.

CONCLUSION

The decision of the Court of Appeals is correct; no meritorious issue of federal and state court relationships is present; this is a private controversy important to these litigants only. It is respectfully submitted that the petition for writ of certiorari should be denied.

CLIFFORD E. FIX
Attorney for Respondents

RAY D. AGEE,
STEPHAN, STEPHAN & HEAP
WILLIAM J. LANGLEY
PARRY, KEENAN, ROBERTSON & DALY
Twin Falls, Idaho,
Of Counsel.

18

FILED
AUG 31 1953
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953.

No. 192

WILLIAM H. BANKS WAREHOUSES, INC., ET AL.,
Petitioners,

vs.

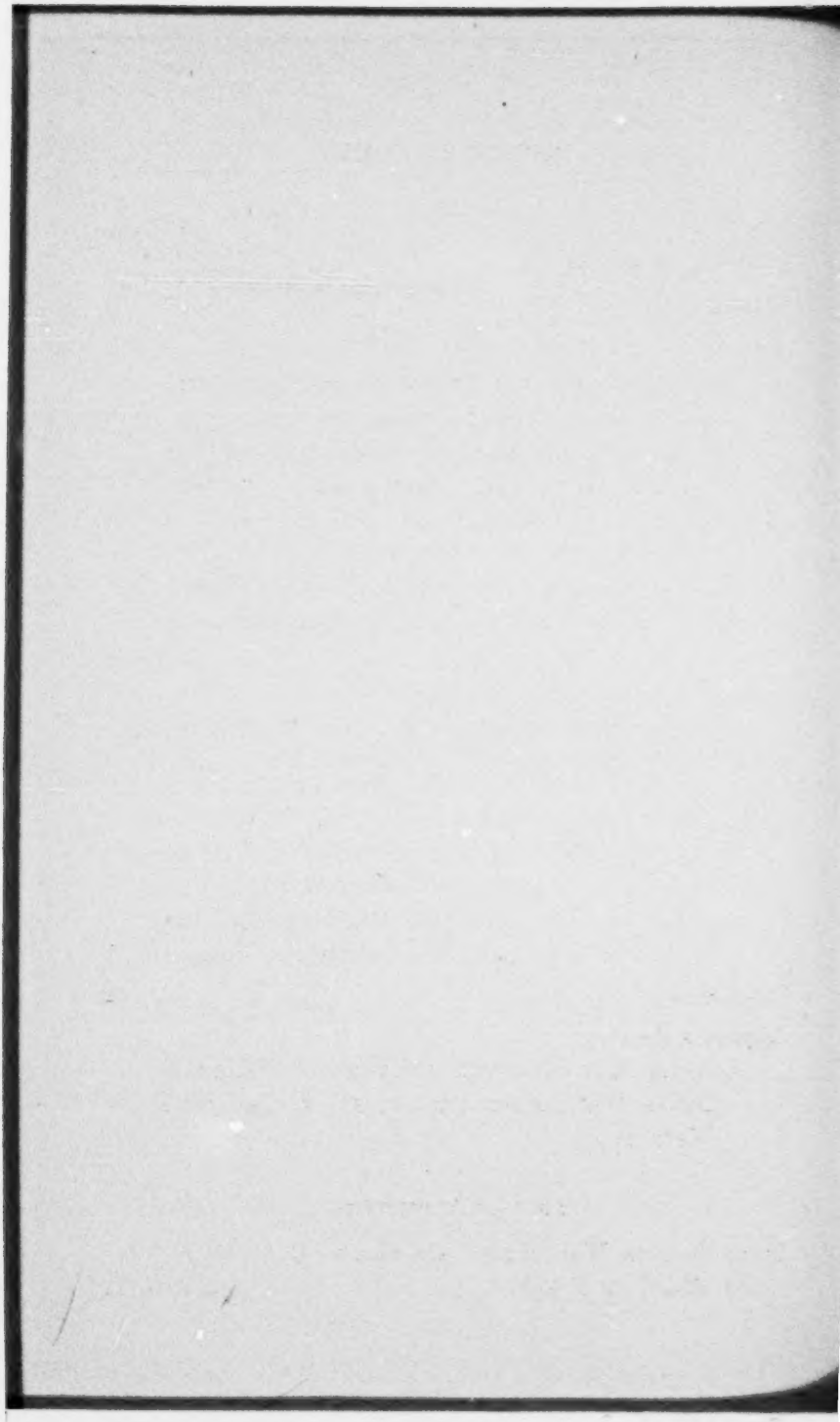
GEORGE L. WATT, ET AL.,
Respondents.

PETITIONERS' REPLY BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

L. DUNCAN LLOYD,
Chicago, Illinois,
WILLIAM R. WALLACE, JR.,
San Francisco California,
Attorneys for Petitioners.

J. LOUIS EBERLE,
RICHARDS, HAGA AND EBERLE,
Boise, Idaho,
WILLIAM R. RAY,
WALLACE, GARRISON, NORTON & RAY,
San Francisco, California,
WILLIAM H. HILLIER,
LORD, BISSELL & KADYK,
Chicago, Illinois,
Of Counsel.

THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO



SUBJECT INDEX.

PAGE

Question Presented 1

Statement 3

Argument 5

This Court Has Not Passed on the Issues Presented by the Present Petition for Certiorari... 5

The District Court Held the Language of the Original Licenses To Be of Fundamental Importance 5

The Respondents Had No Right To Be Parties to the Idaho State Court Action 6

The Subject Matter of the State Court Action Was Not and Could Not Have Been Submitted to the District Court 7

Respondents' Attempt to Call Banks a "Public Warehouseman" Is Beside the Point Because Banks Did Not in Fact Operate a Public Warehouse and None of the Respondents Dealt With Banks as a Warehouseman in any Capacity.... 8

The Amendment to the Licenses in No Way Affected Any "Rights" of Respondents 9

The District Court's Decision Effectively Banishes Field Warehousing From the State of Idaho 11

Conclusion 12

Appendix A—

Schedule of major events in the case of William H. Banks Warehouses, Inc., et al., v. George L. Watt, et al. i

Index of Authorities.

Idaho Bonded Warehouse Law (Idaho Code (1932), Sec. 67-201 to 67-235) 2, 6, 10, 11

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953.

No. 192.

WILLIAM H. BANKS WAREHOUSES, INC., ET AL.,
Petitioners,

vs.

GEORGE L. WATT, ET AL.,
Respondents.

PETITIONERS' REPLY BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

QUESTION PRESENTED.

The Question framed by Respondents starts with the assumption that Banks was the "warehouseman" at both Filer and Rupert. This begs the fundamental question in the case—the issue of whether Banks was the "warehouseman" at either warehouse. That this was the fundamental issue was clearly understood by the District Court which stated (R. 269):

> "The main question is: Was Banks the Warehouseman?"

The District Court concluded Banks was the "warehouseman," but, as pointed out in the Petition, pp. 16-17, this conclusion was based solely on the ground that the original

license certificates were valid, legal licenses and that they, without more, made Banks the "warehouseman" at both warehouses and made Banks liable to Respondents. This holding necessarily denied full faith and credit to the Idaho State Court decision which held the very same license certificates to be void and beyond the power of the Idaho Department of Agriculture to issue under the Idaho Bonded Warehouse Law. Thus the question of judicial power and full faith and credit, as set forth in the Question Presented in the Petition (p. 3), is fundamental to the whole case.

Respondents' basic erroneous assumption and the other unwarranted assumptions in the Question framed by Respondents are treated under the Argument section of this brief in reply to specific arguments based on those assumptions.

STATEMENT.

Respondents state that Petitioners' Statement is "colored and inaccurate in many respects" but fail to point out even one instance of "color" or "inaccuracy". In their own Statement, Respondents state that licenses were issued to Banks (Brief in Opposition, p. 4), but fail to point out that the licenses for the 1947-1948 license year were not issued until April 2, 1948, long after Respondents delivered their products to Jean. Their statement, on the same page, that "public warehouses" were operated in each building is misleading because it tends to imply the public warehouses were operated by Banks. In fact, however, the public warehouse business at both locations was operated by Jean, as pointed out in the Petition, pp. 7-8 and 9-10. The statement, in the same paragraph, that Banks was the "warehouseman" at each building is a conclusion which begs the fundamental issue in the case as has been demonstrated in the discussion above under "Question Presented".

At the risk of repetition, Petitioners wish to re-emphasize the factual situation which existed at Rupert and at Filer at the time Respondents deposited their grain in the respective warehouses. Each warehouse was owned by the "Jean Seed Company", the trade name of W. Andrew Jean. Jean had owned and operated the warehouse at Filer since 1943 and many of the Filer Respondents had dealt with him during that entire period (See Petition, pp. 7-8). He constructed the Rupert warehouse in the spring of 1947 and opened for business in the summer of that year (See Petition, pp. 9-10). Jean had no warehouse license after July 1, 1945, though he was obviously conducting the type of business requiring a warehouse license and he had held ware-

house licenses in prior years (Stubblefield, R. 566). All the Respondents admit they delivered their produce to "Jean Seed Company" or its agents and received scale tickets or other documents acknowledging receipt of that produce by Jean Seed Company (Summary. Ans. to Int., R. 442 at 447-452 and exhibits referred to therein; also Finding XXIX, R. 336 at 337-338). Jean converted that produce or failed to account for it. None of the Respondents dealt with Banks in any way at any time. The first time Respondents indicated any interest in or knowledge of Banks was in June, 1948, after their claims against Jean proved fruitless. In view of these undisputed facts, the Respondents cannot recover against Banks—and the decision below cannot be sustained—unless it can be established that in dealing with Jean the Respondents were, in legal effect, dealing with Banks.

Because of the Respondents' suggestions (Brief in Oppostion, pp. 8, 12) that Petitioners were responsible for a delay in disposition of the present case, Petitioners wish to call the Court's attention to the record which shows conclusively that they proceeded with dispatch at every stage of the case. The record further shows that the Respondents delayed over a year in filing their answers to the complaint, over three months in filing their responsive brief in the District Court after the trial and approximately six months in preparing findings of fact and conclusions of law after the District Court gave its opinion. A schedule of the dates on which events in the history of this case took place is included herewith as Appendix A. Any delay was due to no fault of Petitioners.

ARGUMENT.

This Court Has Not Passed on the Issues Presented By the Present Petition for Certiorari.

(Reply to point 1 of Respondents' Argument, pp. 6-8.)

The prior petition for certiorari (October Term, 1952, No. 266) was granted on a procedural ground and the case remanded to the Court of Appeals (345 U. S. 932 (1953)). Obviously this Court did not reach the merits when it deemed the procedural ground adequate to dispose of the case. The cases cited by Respondents (Brief in Opposition, pp. 7-8) confirm this principle.

The District Court Held the Language of the Original Licenses to Be of Fundamental Importance.

(Reply to point 2 and 2(a) of Respondents' Argument, pp. 9-10.)

In the above section of their Argument, Respondents go to some length in attempting to lead this Court to believe that the District Court considered the language of the licenses immaterial. On page 15 of their Brief in Opposition they go so far as to quote from the Idaho State Court's decision to the effect that the controversy between third parties (Respondents) and Banks could not depend upon the error of a state stenographer in filling out the license certificates. With this statement Petitioners are in entire agreement. But the District Court, and the Court of Appeals which adopted its decision, held otherwise. They based their holding on the "state stenographer's error." The District Court stated (R. 250), after devoting 14 pages

(R. 236-250) to a discussion of the original and amended licenses and the mandamus proceeding,

> "The bean growers (Respondents) had a right to rely on, and Banks is bound by, the licenses as they were *before* the amendment." (Emphasis added.)

It is therefore obvious that the language of the original licenses was fundamental to the holding of the District Court and the Court of Appeals.

The attempt of Respondents to limit the effect of the mandamus action to a mere decision on a fact issue is equally fallacious. The writ of mandate lies only to enforce a clear ministerial duty by an administrative official. Such ministerial duties must be determined by a construction of the statute in question. To determine whether there was such a duty in the present situation, the Idaho State Court necessarily had to consider the nature and extent of the duties imposed by the Idaho statute on the Commissioner of Agriculture. That the Idaho Court did this is evident from its memorandum opinion (Trial Ex. 34, R. 555; Appendix A, Petition, p. 31), particularly by the statement (Appendix A, Petition, p. 34) that the Department was authorized to issue warehouse licenses, not general business licenses—such as the licenses which were issued "to conduct the Jean Seed Company."

The Respondents Had No Right to Be Parties to the Idaho State Court Action.

(Reply to point 2(b) of Respondents' Argument, pp. 10-11.)

As has been pointed out in the Petition, pp. 20-21, the Idaho State Court decided the Idaho Department of Agriculture had no *power* to issue licenses in the form of the original licenses issued in this case. How can Respondents claim to have any "rights" under licenses which were er-

roneous and void from their inception? And what right did they have to be heard in an action brought by the licensee against the issuer of the licenses to determine the power to issue those licenses? Respondents suggest no basis for a right to be heard except the unsupportable claim that they had some sort of "rights" in the void licenses originally issued.

The Subject Matter of the State Court Action Was Not Submitted and Could Not Have Been Submitted to the District Court.

(Reply to point 2 (c) Respondents' Argument, pp. 11-12.)

Respondents refer to p. 8 and 14 of the record (Brief in Opposition, p. 11) to support their statement that the subject matter of the State Court action was submitted to the District Court. An examination of these pages of the record reveals that they refer to two sections of Petitioners' Complaint for Declaratory Judgment wherein, as part of a narrative allegation concerning Banks' field warehouse activities, it is stated that Banks applied for and was issued warehouse licenses on certain dates. No mention whatsoever is made concerning the language of the licenses and copies of them were not attached as exhibits to the complaint. These allegations did not, by any stretch of the imagination, submit to the District Court the question of whether the Idaho Department of Agriculture had power to issue licenses in the form of the original licenses here involved. As shown in the Petition, pp. 6-7, the only question presented to the District Court by the pleadings in this case was the question of whether Jean was Banks' agent.

It has been pointed out in the Petition, pp. 26-28, that the State Court was the proper, in fact the only, forum in which the issues as to the propriety of the original licenses could be tried.

Respondents' Attempt to Call Banks a "Public Warehouseman" Is Beside the Point Because Banks Did Not in Fact Operate a Public Warehouse and None of the Respondents Dealt With Banks as a Warehouseman in Any Capacity.

(Reply to point 2 (d) of Respondents' Argument, pp. 12-13.)

Throughout their Brief in Opposition and particularly in the above section, Respondents attempt to argue that by applying for licenses, Banks automatically became a public warehouseman and was therefore automatically liable to Respondents. Assuming that Banks by applying for and securing licenses was *authorized* to become a public warehouseman, Banks could *actually* become a public warehouseman only if it actually conducted a public warehouse and then only as to those persons who dealt with it as a public warehouseman. But Banks did not in fact conduct a public warehouse and Respondents never dealt with Banks in any capacity—they dealt only with Jean and they dealt with Jean as a public warehouseman. Calling Banks a "public warehouseman" does not make Banks responsible for Jean's activities.

Before Respondents can recover from Banks they must show some legal relationship with Banks. The District Court found such relationship by saying that the language of the original licenses, which purported to license Banks "to conduct the Jean Seed Company" made Banks, in legal effect, the warehouseman of Jean's warehouses and responsible for all Jean's warehouse activities. In so doing, the District Court necessarily denied full faith and credit to the Idaho State Court decision, which held those very same licenses void.

The Amendment to the Licenses in No Way Affected Any "Rights" of Respondents.

(Reply to point 3 of Respondents' Argument, pp. 13-16.)

The argument that Respondents' "rights" could not be affected by the amendment to the original licenses assumes they had some "rights" in the original licenses. But the Idaho State Court decided the original licenses were erroneous and that the Idaho Department of Agriculture had no power to issue such licenses. The licenses were therefore void and could not give any "rights" to anyone. The Idaho State Court decision in no way prevented Respondents from showing their relations, if any, with Banks; from proving, if they could, that Jean was Banks' agent or that Banks was estopped to deny agency; or from proving, if they could, that, for reasons not connected with the language of the original licenses, Banks was the "warehouseman" at either or both warehouses and liable to Respondents. The District Court evidently felt Respondents had failed to prove their case on any of these theories. In order to hold Banks liable to Respondents, the District Court had to hold that Respondents "* * * had a right to rely on, and Banks is bound by, the licenses as they were before amendment" (R. 250). This is another way of stating that Respondents had a right to rely on void licenses which they did not and could not have actually relied upon because the licenses were not in existence until long after they delivered their produce to Jean. This does not make sense and it denies full faith and credit to the Idaho State Court decision.

Subparagraph (a) on p. 14 of the Brief in Opposition ignores the fact that Banks never took possession under its lease at Rupert and took a very limited possession under its lease at Filer, while Jean was at all times in full possession at Rupert and in full possession at Filer except for the very

limited area (posted and marked) devoted to storage of produce covered by Banks' warehouse receipts (See Petition pp. 7-10). As to subparagraphs (b) and (c), the attempt to call Banks a "public warehouseman" is not apposite, as has been demonstrated above, p. 8. Subparagraphs (d) and (e) ignore the fact that Jean and not Banks conducted the public warehouse business at both Rupert and Filer and that Jean and not Banks converted Respondents' produce (See Petition, pp. 7-10). Subparagraph (f) assumes that if Banks had not applied for licenses, the Idaho Department of Agriculture would not have permitted Jean to operate his public warehouses. This assumption is not justified by the record which shows Jean operated his Filer warehouse without a license for a year or more before ever having any contact with Banks (See Petition, pp. 7-8), and that he commenced his business at Rupert before Banks applied for its own license to operate there (See Petition, pp. 9-10). The effect of the District Court's decision is to hold Banks, which complied with the law, responsible for the defalcations of Jean, who openly flaunted the law.

The statement in the last paragraph of point 3, on page 16, and the similar statement on page 3 of Respondents' Brief in Opposition, are misconstructions of the District Court's opinion. The Court properly interpreted the statute as imposing liability only on a "warehouseman" which was defined therein as a person "operating" or "controlling" a warehouse (Idaho Bonded Warehouse Law, Sec. 67-202; Appendix D, Petition, p. 54), not anyone "whose actions induce the opening and operating of a warehouse." But in order to hold Banks the "warehouseman" at the warehouses here involved, the Court relied on its own interpretation of the legal effect of the original license certificates and the Department's powers, under the statute to issue such license certificates. In so doing, it ignored the state law and thereby exceeded its judicial powers.

The District Court's Decision Effectively Banishes Field Warehousing From the State of Idaho.

(Reply to point 4 of Respondents' Argument, pp. 16-18.)

Petitioners again refer to the explicit language of the District Court's opinion (R. 263):

> "I again state that a field warehousing business has no place under the statutes of the State of Idaho."

This is not an isolated statement taken from context but a deliberate conclusion which the District Court reached after long discussion of the Idaho Bonded Warehouse Law. The Court's statement is not by its terms limited to the field warehousing of agricultural produce, and it would not be regarded as so limited by prudent counsel advising bankers or other lending institutions. Unless reversed, it will stand as an effective practical block to the use of field warehousing as a security device in the State of Idaho and —as pointed out in the Petition (pp. 22-25)—this result is contrary to Idaho law and prior decisions of the Court of Appeals for the Ninth Circuit.

CONCLUSION.

It is respectfully submitted that the Petition should be granted.

L. Duncan Lloyd,
Chicago, Illinois,

William R. Wallace, Jr.,
San Francisco California,
Attorneys for Petitioners.

J. Louis Eberle,
Richards, Haga and Eberle,
Boise, Idaho,

William R. Ray,
Wallace, Garrison, Norton & Ray,
San Francisco, California,

William H. Hillier,
Lord, Bissell & Kadyk,
Chicago, Illinois,
Of Counsel.

APPENDIX A.

Schedule of major events in the case of *William H. Banks Warehouses, Inc., et al.*, v. *George L. Watt, et al.*

Date	Event	Record or Other Reference
July 6, 1948	Petitioners file Complaint for Declaratory Judgment in United States District Court for the District of Idaho	3[1]
August 5, 1949	Respondents Watt, *et al.*, file answer	29 at 39
September 1, 1949	Respondents Ulrich, *et al.*, file answer	40 at 76
October 1, 1949	Respondents Ingraham, *et al.*, file answer	78 at 176
March 8, 1950	Trial commenced	227, 487
March 10, 1950	Trial completed. Parties directed to file briefs after transcript was prepared	231-232
June 5, 1950	Transcript filed	672
July 14, 1950	Petitioners' Brief filed	Dist. Ct. Docket
October 28, 1950	Respondents' Brief filed	Dist. Ct. Docket
Oct. 31, Nov. 3, 1950	Respondents' supplemental Briefs filed	Dist. Ct. Docket
December 11, 1950	Petitioners' reply brief filed	Dist. Ct. Docket
March 16, 1951	District Court's opinion filed. Respondents directed to prepare findings of fact and conclusions of law	233 at 270
August 29, 1951	Findings of fact, conclusions of law and judgment entered by District Court	309 at 352, 358
August 29, 1951	Petitioners file notice of appeal to Court of Appeals for the Ninth Circuit	427-428
May 8, 1952	Oral argument in Court of Appeals	679
May 15, 1952	Memorandum opinion by Court of Appeals	679
June 15, 1952	Petition for rehearing denied by Court of Appeals	721
August 11, 1952	Petitioners file petition for certiorari in the United States Supreme Court	U. S. Supreme Ct. Docket

Date	Event	Record or Other Reference
April 13, 1953	Supreme Court grants certiorari and remands case to Court of Appeals for the Ninth Circuit for further action in light of *Western Pacific* decision	699-700
May 27, 1953	Court of Appeals for the Ninth Circuit adopts new rule concerning rehearing *en banc.*	723
June 12, 1953	Petitioners file supplemental petition for rehearing in the Court of Appeals	701
June 15, 1953	Court of Appeals denies supplemental petition for rehearing	722-723
July 21, 1953	Present petition for certiorari filed in United States Supreme Court	U. S. Supreme Ct. Docket

[1] By inadvertence, the clerk's endorsement of the date on which the complaint was filed was omitted from the printed record. The date July 6, 1948 appears in the District Court Docket and is admitted by Respondents in their Brief in Opposition, p. 5. It is also admitted on p. 11, but Respondents by mistake use the month of June, 1948 instead of July.

COPY BOUND CLOSE IN CENTER